

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

August 24, 2011

Frederico C. Trejo
SBI No. 00612
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: State of Delaware v. Frederico C. Trejo
Cr.A. No. S08-02-0866 - Def. ID No. 0802031126
Motion for Postconviction Relief - Letter Opinion

Date Submitted: June 2, 2011

Dear Mr. Trejo:

This is my decision on your Motion for Postconviction Relief. You pled guilty to one count of Rape in the Third Degree and one count of Possession of a Deadly Weapon During the Commission of a Felony on July 11, 2008. I sentenced you on the same day to 30 years at Supervision Level V, suspended after serving five years at Supervision Level V for probation. The charges arose out of your rape of Nicolasa Perez-Ramirez. You and Nicolasa had known each other for two years. On February 24, 2008, she called you and asked you to take her to the store. After you took Nicolasa and her child to the store, you told her that you had to stop at your house to make a phone call. After making the phone call, you grabbed Nicolasa and demanded that she have sex with you. You then threatened to hurt her and her child. You also threatened to report Nicolasa to the department of Immigration and Naturalization Services if she did not become your girlfriend and have sex with you. When Nicolasa refused, you grabbed her arm, covered her mouth,

bit her, and raped her. Nicolasa was able to escape by grabbing your car keys and driving your car to the Georgetown Police Station. The police took her to the Nanticoke Memorial Hospital, where she was examined by a forensic nurse. The examination revealed abrasions on Nicolasa's upper arm, chest and right inner thigh, a bite mark on her left breast, and bruising on her vagina. You followed her to the police station, where you told the police that you had consensual sex with her.

The State was represented by Deputy Attorney General Stacey B. Cohee, Esquire. You were represented by Daniel F. Tyrrell, Jr. Both Cohee and Tyrrell submitted affidavits in response to your motion. You allege that Tyrrell was ineffective and that his ineffective representation of you denied you of your right to confront the witnesses against you and to testify in your own defense. Both attorneys denied your allegations. Given the nature of your allegations, I have concluded that a hearing is not necessary.

DISCUSSION

You allege that Tyrrell was ineffective because he (1) failed to obtain the phone records of the calls between you and Nicolasa, (2) told you that you had to agree to everything that I asked you during the plea colloquy since you had already signed the Truth-In-Sentencing Guilty Plea Form, (3) forced you to take the plea, (4) failed to investigate the imprisonment of another person accused of assaulting Nicolasa, and (5) deprived you of your right to confront the witnesses against you and to testify in your own defense. The United States Supreme Court has established a two-prong test which must be satisfied in order for a defendant to prevail on a claim of ineffective assistance of counsel pursuant to Superior Court Criminal Rule 61.¹ The defendant must show that: (1)

¹ *Strickland v. Washington*, 466 U.S. 668, 1045 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

counsel's representation fell below an objective standard of reasonableness; and (2) counsel's actions were so prejudicial that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial.² Further, a defendant "must make and substantiate concrete allegations of actual prejudice or risk summary dismissal."³

There exists a 'strong presumption' that trial counsel's representation fell within the 'wide range of reasonable professional assistance, and the defendant must rebut this presumption in order to succeed on a claim for ineffective assistance of counsel.⁴ "This Court must eliminate from its consideration the 'distorting effects of hindsight when viewing that representation.'"⁵ There is no procedural bar to claims of ineffective assistance of counsel.⁶

A. The Phone Records

You allege that Tyrrell was ineffective because he did not obtain the phone records of the calls between you and Nicolasa. You allege that the phone records would show that Nicolasa called you a few hours after the rape and told you that she was alright. You also allege that they would show that she called you months before this incident and threatened to accuse you of raping her. The gist of your argument is that Nicolasa, for unknown reasons, planned to accuse you of raping her. In any event, the phone records would not have helped you because they would not have described what you said to each other. At

² *State v. Thompson*, 2003 WL 21244679 (Del. Super. April 15, 2003), citing *Strickland*, 466 U.S. 668, 687 (1984).

³ *Coleman*, 2003 WL 22092724, at *2 (Del. Super. Feb. 19, 2003).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at *1.

best they would show that a call was made from Nicolasa's phone to your phone months before the attack, and once after the attack. The phone records would not even prove that it was Nicolasa who made the calls. Moreover, since you were acquaintances, it would not have been unusual for you to have called each other before the rape. While it would have been unusual for Nicolasa to have called you after your raped her, there is no evidence that she ever did call you. Your allegation that she did so is unsupported by any evidence. This allegation is conclusory and without merit.

B. The Truth-In-Sentencing Guilty Plea Form

You allege that Tyrrell told you that you had to agree to everything I asked you during the plea colloquy since you had already signed the Truth-In-Sentencing Guilty Plea form. I assume the gist of your argument is that you mean that Tyrrell told you that you had to acknowledge raping Nicolasa. I did not accept your plea until you satisfactorily answered all my questions during the plea colloquy, the purpose of which was for me to determine if you have made a knowing, intelligent and voluntary decision to waive your trial rights and plead guilty. If you did not answer my questions satisfactorily during the plea colloquy, or if I felt that you were not entering the plea knowingly, voluntarily, and intelligently, then I would not have accepted your guilty plea. I asked you the following question regarding the rape of Nicolasa:

THE COURT: Did you commit the two offenses that you are pleading guilty to?
(Interpreter translating.)

THE DEFENDANT: (Through the interpreter): Yes.

You admitted under oath that you raped Nicolasa. If you did not rape her, then you should have told me so during your plea colloquy, not now. You are bound by your

answers in open court.⁷ I have no reason to believe that your answers during the plea colloquy were not truthful. This allegation is conclusory and without merit.

C. The Forced Plea

You allege that Tyrrell forced you to take the plea offer by (1) telling you that if you did not take the plea, then you would be convicted and sentenced to anywhere between 35 years to life in prison, (2) describing the evidence against you, which scared you, and (3) that you would not receive a fair trial because everyone involved in your prosecution and trial was a racist. On the Truth-In-Sentencing Guilty Plea Form you were asked the following two questions regarding your decision to plead guilty:

Have you freely and voluntarily decided to plead guilty to the charge listed in your written plea agreement?

Has your lawyer, the State, or anyone threatened or forced you to enter this plea?

You answered “yes” to the first question and “no” to the second question. These are the appropriate answers for a defendant who has voluntarily decided to plead guilty.

During the plea colloquy, the following exchange took place:

THE COURT: Did anybody force you to take this guilty plea?
(Interpreter translating).

THE DEFENDANT (Through the interpreter): No.⁸

If you felt you were forced to plead guilty, then you should have answered “yes.” When Tyrrell told you it was in your best interest to take the plea instead of going to trial because you could be convicted and forced to spend most of your life in jail, he was merely giving

⁷ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁸ Plea Colloquy Transcript at 5-6.

you an honest assessment of the State's case against you. Moreover, I do not believe that Tyrrell told you that everyone involved in your case was a racist. Further, when you were asked if you were satisfied with Tyrrell's representation of you, you answered "yes."⁹ If you felt that you had been harassed or coerced to plead guilty by Tyrrell, then you should have answered "no" when I asked if you were satisfied with his representation. You are bound by your answers in open court.¹⁰ This allegation is conclusory and without merit.

D. The Imprisonment of Hector Chaves

You allege that Tyrrell was ineffective because he failed to investigate the imprisonment of Hector Chaves for assaulting Nicolasa. It is unclear to me how this relates to your case and what you wished Tyrrell to investigate. Moreover, I searched the criminal records and could not find any charges involving a Hector Chaves (or Chavez), except for some minor traffic offenses. This allegation is conclusory and without merit.

E. The Denial of Constitutional Rights

You allege that because Tyrrell was ineffective that you were not afforded the right to question the witnesses against you and to testify in your own defense. I have already concluded that your allegations of ineffectiveness of counsel were meritless. Moreover, you knew that by pleading guilty that you were waiving your trial rights. On the Truth-In-Sentencing Guilty Plea Form, which was in your native language, you were asked to answer a number of questions. The following is one of the questions:

Do you understand that because you are pleading guilty you will not have a trial, and therefore waive (give up) your constitutional right:

⁹ Plea Colloquy Transcript at 6.

¹⁰ *Somerville*, 703 A.2d at 636.

1. To be presumed innocent until the State can prove each and every part of the charge(s) against you beyond a reasonable doubt;
2. To a speedy and public trial;
3. To trial by jury;
4. **To hear and question the witnesses against you;** (Emphasis added)
5. To present evidence in your defense;
6. **To testify or not testify yourself; and** (Emphasis added)
7. To appeal to a higher court?

You answered “Yes” to this question and signed your name at the bottom of the form.

There is no doubt in my mind that you knew you were waiving your right to question the witnesses against you and to testify in your own defense. Additionally, during the plea colloquy, the following exchange took place:

THE COURT: Do you understand all the rights that you are waiving by pleading guilty? (Interpreter translating.)

THE DEFENDANT (Through the interpreter): I don’t understand that. What is that?

THE COURT: Did you discuss with your attorney all of your trial rights?

(Interpreter translating.)

THE DEFENDANT (Through the interpreter): Oh Yes.

THE COURT: And do you understand that by pleading guilty to these two offenses, you are waiving all of those trial rights and that there will not be a trial? (Interpreter translating.)

THE DEFENDANT (Through the interpreter): I waive? What is that?

THE COURT: It means that you will not have a trial. There will be no trial. (Interpreter translating.)

THE COURT: Did anybody force you to take this guilty plea? (Interpreter translating.)

THE DEFENDANT (Through the interpreter): No.¹¹

¹¹ Plea Colloquy Transcript at 5-6.

You are bound by your answers in open court.¹² Your allegation is conclusory and without merit.

CONCLUSION

Your Motion for Postconviction Relief is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

/S/ E. Scott Bradley

E. Scott Bradley

oc: Prothonotary's Office
cc: Stacey B. Cohee, Esquire
Daniel F. Tyrrell, Jr.

¹² *Somerville*, 703 A.2d at 632.